

§ 143-53. Rules.

- (a) The Secretary of Administration may adopt rules governing the following:
- (1) Prescribing the routine and procedures to be followed in canvassing bids and awarding contracts, and for reviewing decisions made pursuant thereto, and the decision of the reviewing body shall be the final administrative review. The Division of Purchase and Contract shall review and decide a protest on a contract valued at twenty-five thousand dollars (\$25,000) or more. The Secretary shall adopt rules or criteria governing the review of and decision on a protest on a contract of less than twenty-five thousand dollars (\$25,000) by the agency that awarded the contract.
 - (2) **(See Editor's note)** Prescribing the routine, including consistent contract language, for securing bids on items that do not exceed the bid value benchmark established under the provisions of G.S. 143-53.1, 115D-58.14, or 116-31.10. The bid value benchmark for securing offers for each State department, institution, and agency established under the provisions of G.S. 143-53.1 shall be determined by the Director of the Division of Purchase and Contract following the Director's consultation with the State Budget Officer and the State Auditor. The Director for the Division of Purchase and Contract may set or lower the benchmark, or raise the benchmark upon written request by the agency, after consideration of their overall capabilities, including staff resources, purchasing compliance reviews, and audit reports of the individual agency. The routine prescribed by the Secretary shall include contract award protest procedures and consistent requirements for advertising of solicitations for securing offers issued by State departments, institutions, universities (including the special responsibility constituent institutions of The University of North Carolina), agencies, community colleges, and the public school administrative units.
 - (3) Repealed by Session Laws 2011-338, s. 4, effective July 1, 2011.
 - (4) Prescribing items and quantities, and conditions and procedures, governing the acquisition of goods and services which may be delegated to departments, institutions and agencies, notwithstanding any other provisions of this Article.
 - (5) Prescribing conditions under which purchases and contracts for the purchase, installment or lease-purchase, rental or lease of goods and services may be entered into by means other than competitive bidding, including, but not limited to, negotiation, reverse auctions, and acceptance of electronic bids. Notwithstanding the provisions of subsections (a) and (b) of this section, any waiver of competition for the purchase, rental, or lease of goods and services is subject to prior review by the Secretary, if the expenditure exceeds ten thousand dollars (\$10,000). The Division may levy a fee, not to exceed one dollar (\$1.00), for review of each waiver application.
 - (6) Prescribing conditions under which partial, progressive and multiple awards may be made.
 - (7) Prescribing conditions and procedures governing the purchase of used goods.
 - (8) Providing conditions under which bids may be rejected in whole or in part.
 - (9) Prescribing conditions under which information submitted by bidders or suppliers may be considered proprietary or confidential.

- (10) Prescribing procedures for making purchases under programs involving participation by two or more levels or agencies of government, or otherwise with funds other than State-appropriated.
- (11) Prescribing procedures to encourage the purchase of North Carolina farm products, and products of North Carolina manufacturing enterprises.
- (12) Repealed by Session Laws 1987, c. 827, s. 216.

(b) In adopting the rules authorized by subsection (a) of this section, the Secretary shall include special provisions for the purchase of goods and services, which provisions are necessary to meet the documented training, work, or independent living needs of persons with disabilities according to the requirements of the Rehabilitation Act of 1973, as amended, and the Americans with Disabilities Act, as amended. The Secretary may consult with other agencies having expertise in meeting the needs of individuals with disabilities in developing these provisions. These special provisions shall establish purchasing procedures that:

- (1) Provide for the involvement of the individual in the choice of particular goods, service providers, and in the methods used to provide the goods and services;
- (2) Provide the flexibility necessary to meet those varying needs of individuals that are related to their disabilities;
- (3) Allow for purchase outside of certified sources of supply and competitive bidding when a single source can provide multiple pieces of equipment, including adaptive equipment, that are more compatible with each other than they would be if they were purchased from multiple vendors;
- (4) Permit priority consideration for vendors who have the expertise to provide appropriate and necessary training for the users of the equipment and who will guarantee prompt service, ongoing support, and maintenance of this equipment;
- (5) Permit agencies to give priority consideration to suppliers offering the earliest possible delivery date of goods or services especially when a time factor is crucial to the individual's ability to secure a job, meet the probationary training periods of employment, continue to meet job requirements, or avoid residential placement in an institutional setting; and
- (6) Allow consideration of the convenience of the provider's location for the individual with the disability.

In developing these purchasing provisions, the Secretary shall also consider the following criteria: (i) cost-effectiveness, (ii) quality, (iii) the provider's general reputation and performance capabilities, (iv) substantial conformity with specifications and other conditions set forth for these purchases, (v) the suitability of the goods or services for the intended use, (vi) the personal or other related services needed, (vii) transportation charges, and (viii) any other factors the Secretary considers pertinent to the purchases in question.

(c) The purpose of rules promulgated hereunder shall be to promote sound purchasing management.

(d) Notwithstanding the provisions of this section or any rule adopted pursuant to this Article, The University of North Carolina may solicit bids for service contracts with a term of 10 years or less, including extensions and renewals, without the prior approval of the State Purchasing Officer.

(e) Expired. (1931, c. 261, s. 5; 1933, c. 441, s. 1; 1957, c. 269, s. 3; 1971, c. 587, s. 1; 1975, c. 879, s. 46; 1981, c. 602, s. 4; 1983, c. 717, ss. 63-64.1; 1985 (Reg. Sess., 1986), c. 955, ss. 87, 88; 1987, c. 827, s. 216; 1989 (Reg. Sess., 1990), c. 936, s. 3(b); 1995, c. 256, s. 1;

1997-412, s. 3; 1998-217, s. 15; 1999-400, ss. 1, 2; 2002-107, s. 2; 2003-147, s. 9; 2004-203, s. 72(b); 2005-125, s. 1; 2006-203, s. 84; 2009-475, s. 2; 2011-338, s. 4; 2013-289, s. 7.)